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Paper No. 6

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JUN 21 2002

In re Application of :
Cudd, et al. :
Application No. 09/943,118 :
Filed: August 30, 2001 :
Attorney Docket No.: 9265.00 :
For: DOWNLOADING AND UPLOADING DATA:
IN INFORMATION NETWORKS :

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

OFFICE OF PETITIONS

This decision is in response to the petition under 37 CFR 1.47(a), filed March 14, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed August 30, 2001 without an executed oath or declaration and naming Richard Cudd, Matthew A. Ward, Rodrick J. M. MacLeod, and Michael Waller as joint inventors. Accordingly, on October 4, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks item (1). The petition lacks sufficient evidence that the non-signing inventors cannot be reached, were ever presented with a copy of the application papers (specification, claims, drawings, and oath or declaration), or, having been presented with the application papers, refused to sign the oath or declaration.

The declaration of Christine Sheppard states that the application papers were forwarded to the non-signing inventors and that the non-signing inventors failed to respond.

Petitioner is advised that before a refusal to sign or oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers to the non-signing inventor. A copy of the application

papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. See, MPEP 409.03(d).

While the declaration of Christine Sheppard states the application papers were forwarded to the non-signing inventors, the copies of the letters sent to the inventors do not indicate that a complete copy of the application was presented. The letters merely indicate that a declaration, assignment, and self-addressed envelope were presented.

Any renewed petition must be supported by evidence that each inventor was presented with a complete copy of the application papers (specification, claims, drawings, and oath or declaration). In particular, the renewed petition should set forth the manner in which the application papers were presented to the non-signing inventors. Petitioner may wish to provide the Office with copies of dated cover letters wherein it indicates the enclosure of the application papers (specification, claims, drawings, and oath or declaration), and, if available, copies of mailing receipts as evidence that the non-signing inventors were presented with a copy of the application papers. If, after having been presented with the application papers, an oral refusal is made by a non-signing inventor, this fact along with the time and place of the refusal must be stated in an affidavit or declaration signed by the person to whom the refusal was made. Any written refusal to execute the oath or declaration by the inventor should likewise be submitted. Petitioner's attention is directed to MPEP 409.03(d) for further information on the presumptive evidence required for accordance of status under 37 CFR 1.47.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, DC 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



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